SYARIKAT RANI'S v. ZAIN BUILDING PROPERTY DEVELOPMENT CO. LTD.

[A.C.J. (Mohamed Zahir J.) June 24, 1979]
[Kota Bahru — Civil Appeal No. 1 of 1979]

Landlord and Tenant — Tenancy agreement for a term of three years — Rent paid monthly — Whether month's notice to quit effective to terminate tenancy.

In this case the respondents sued the appellants for vacant possession of premises in Kota Bharu which they alleged was let to the appellants at a monthly tenancy and which had been terminated by a month's notice to quit. The appellants claimed to hold the premises under a tenancy agreement for a term of three years made with the owners of the premises and denied that the respondents were their landlords. The appellants appealed against the judgment of the learned President of the Sessions Court ordering them to deliver vacant possession of the premises.

Held: (1) the tenancy agreement clearly showed that the premises were let on behalf of the owners, the ten Tengkus, and that the tenancy was for three years. The respondents were therefore not the landlords and had no right to possession of the premises;

(2) although the rent was paid monthly this did not turn the tenancy into a monthly tenancy;

(3) the month's notice to quit given to the appellants before the completion of the term of three years was bad and ineffective.

Cases referred to:-

(1) *Clarke* v. *Grant* [1950] 1 K.B. 104.

(2) *Adler* v. *Blackman* [1952] 2 All E.R. 945.

CIVIL APPEAL.

Datuk H.L. Wrigglesworth for the appellants.

Mohamed Dzaiddin bin Haji Abdullah for the respondents.

Cur. Adv. Vult.

Mohamed Zahir J.: The appellants appeal against the decision of the learned President of the Sessions Court against the appellants ordering the appellants to deliver up vacant possession of premises No. 3763 Jalan Temenggong, Kota Bharu and other consequential orders.

The respondents had sued the appellants for possession of the said premises alleging themselves to be the landlord of the premises which were let to the appellants at a monthly tenancy of $250 and also alleging that the required one month's notice had been served on the appellants.

The defendants in their defence admitted they were the tenants of the premises but denied that the respondents were entitled to recover possession of the premises and denied that they held the premises as a tenant of the respondents and claimed that they were tenants by virtue of a tenancy agreement dated March 12, 1973 with the owners of the premises and that the tenancy was for a term of 3 years with option for renewal for another 3 years. The appellants also denied that the tenancy had been duly determined and thereby dispute the validity of the notice to quit.

There are ten grounds of appeal but they can be summarised into three issues, namely:

(a) who are the landlords of the premises?

(b) whether the notice to quit was valid?

(c) whether the tenancy created was a monthly tenancy or for a term?

The agreed bundle of documents contains the agreement dated March 12, 1973 alleged by the appellants. It was executed between one Tuan Alang bin Tuan Ibrahim on behalf of 10 Tengkus who were the registered proprietors of the land on which the premises were erected. The premises were permanent 4-storied brick building and as such they were fixtures and by virtue of section 5 of the National Land Code formed part of the land. These facts were not in dispute. The material parts of the tenancy are as follows:

(i) That the ten Tengkus entered into the agreement and identified themselves as landlords;

(ii) That Tuan Alang bin Tuan Ibrahim was their appointed agent;

(iii) The relevant wordings of the agreement as to the creation of the tenancy appearing in the habendum are as follows:

> "... Shop-house No. 3763, Jalan Temenggong, Kota Bharu, Kelantan situated on the ground floor of Zain Building in the said town of Kota Bharu (hereinafter called "the said premises") to be held by the tenant for a period of 3 years from 12th day of March, 1973 at a monthly rental of $250...."

(iv) A sum of $750 being equivalent to 3 months' rent was paid to the landlords;

(v) An option to renew the lease for another 3 years subject to new terms and conditions;

(vi) Tenant to peaceably and quietly deliver up possession of the premises to the landlords upon the termination of term created;

(vii) Tenant on paying the rents regularly to enjoy peaceful possession;

(viii) There was no provision for determination of contract by notice.

In the months following execution of the agreement, the appellants paid rents to the same Tuan Alang bin Tuan Ibrahim who executed the contract on behalf of the ten Tengkus. The said Tuan Alang signed the receipts (P2) as recipient and without anything to indicate for or on whose behalf. On the top of the receipt were the words "Bangunan Zain" in bold capital letters. This method of payment continued until for the month of March, 1975, when according to the appellant's undisputed evidence, the said Tuan Alang failed to collect the rents and the appellants then paid to Messrs Dzaiddin & Co., Advocates & Solicitors after receiving a letter from the said solicitors to pay the rents to them. Receipts were issued by Dzaiddin & Co. (P3) in the firm's name and there was nothing to indicate as to who were the landlords. Neither there was any evidence adduced by the respondents that they were the landlords of the appellants. The agreed bundle of documents also contained an extract from the register of Lembaga Bandaran Kota Bharu indicating that premises No. 3763 were registered in the name of the respondent. But I think this is only for the purpose of payment of assessments to Lembaga Bandaran by virtue of section 26 of the Municipal Enactment, 1938.

From the above facts, I am of the view that the learned President was wrong in deciding that the act of the appellants in receiving receipts of rentals bearing the letters "Bangunan Zain" created a separate con-

tract between the appellants and Bangunan Zain. He failed to note that the contract was between the ten Tengkus expressly described as landlords in the contract for rental of a portion of Zain Building. The ten Tengkus were therefore the landlords in respect of the demised premises known as Zain Building. Pursuant to the contract, the appellants paid rental to Tuan Alang, as representative of the ten Tengkus. As such there is no separate contract.

A landlord can let out his house, which he calls "Sri Chantek" or whatever names to a tenant and having the words "Sri Chantek" written on the receipt does not make "Sri Chantek" the landlord. This is particularly true if the landlord is renting out separate rooms in a big building and the building is normally named. It would be different if the name of the landlord would be the same as the name of the building and this fact is clearly expressed in the contract. But not in this case. The contract does not indicate Zain Building as the landlord and the plaintiff is a limited company incorporated under the Companies Act and Zain Building which might be a sole proprietorship or a partnership are completely different from a limited company which possesses a legal entity.

When the appellants continued to pay to Messrs Dzaiddin & Co., the solicitors, again there was no indication that the respondents were the landlord. The solicitors' receipt P3 merely stated rental for premises No. 3763, Jalan Temenggong, Kota Bharu. They did not even state "Zain Building". Here again it did not make the solicitors the landlord even though the name of the solicitors was printed at the top and signed also by the solicitors.

Counsel for the respondents pleaded estoppel which is under section 116 of the Evidence Act. I think the question of estoppel does not arise here as the appellants had never acknowledged the respondents as their landlord.

As such I am of the opinion that the respondents are not the landlord and that their claim should fail on this point alone.

The other two points for consideration should be taken together, that is whether the notice to quit was valid and whether the tenancy created was a monthly tenancy or for a term.

In my opinion the contract entered by the parties herein clearly established a lease for a term. The words "to be held by the tenant for a period of 3 years . . ." cannot be interpreted in any other way although in *Butterworths'* Encyclopaedia of Forms and Precedents, Vol. 11, 4th Edition the word "term" is normally used. But I do not think it makes any difference if the word "period" is used. The arguable part here is that the rental is to be paid monthly. But notwithstanding this method of payment, the contract does not turn it into a monthly tenancy. For instance, a term of tenancy for 10 years at the yearly rental of $1,000 does not turn it into a yearly tenancy. A tenancy for a term of years may be terminated if there is the agreement of the parties in providing notice to terminate in the contract. In this case there is no provision for such notice. Advance rents for three months were collected and provision for the tenant to deliver up possession at the end of the term (here the word "term" was used) created and option for additional 3 years' lease was provided.

A tenancy for years is created by stating a definite number of years, but it may be expressed to be determinable by either party during the term by giving a specific notice (see The Encyclopaedia of Forms and Precedents 4th Edition Volume 11).

A yearly tenancy is properly created by the words "from year to year". Similarly a monthly tenancy is created by the words "from month to month" which is not in this case.

Where a premises are held for a term of years and the tenant holds over at the end of the term, a new yearly or periodic tenancy will ordinarily be established by the acceptance of rent by the landlord unless the intention to create such a new tenancy can be disproved (*Clarke* v. *Grant*[1]).

Where a tenant holds over and where the rent payable under the lease is expressed as a yearly sum so that weekly, monthly or quarterly payments are instalments of that yearly rent, the new periodic tenancy will be a yearly tenancy; but where the rent is expressed in the lease as being a weekly, monthly or quarterly sum, the new tenancy will be respectively a weekly, monthly or quarterly tenancy (see *Adler* v. *Blackman*[2]).

Thus in the instant case I am of the opinion that the tenancy is for a term and if at the end of the term, the tenant holds over, then and only then the tenancy will turn into a monthly tenancy. In the instant case, a month's notice given by the respondents to the appellants before the completion of 3 years' term is bad and ineffective.

I allow the appeal. The order of the learned President is set aside. The respondents' claim is dismissed with costs both in the court below and here. The deposit of $150 paid by the appellants towards appeal costs be refunded to the appellants.

Appeal allowed.

Solicitors: *Wrigglesworth & Co.: Dzaiddin & Co.*

R.A.P. NATHAN v. HAJI ABDUL RAHMAN BIN HAJI YUSOFF & ORS.

[O.C.J. (Syed Agil Barakbah J.) June 30, 1979]
[Alor Star — Civil Suit No. 11 of 1978]

Land Law — Malay Reservation Land — Joint venture with non-Malay for development of land — Subsequent agreement for transfer of land — Caveat — Caveat entered by non-Malay — Caveat extended — Whether non-Malay has caveatable interest — Application to set aside caveat — Whether brought by person aggrieved — Malay Reservation Enactment, Kedah, s. 6 — National Land Code, ss. 323, 325, 326, 327 & 328.

In this case the lands in question, Malay reservation lands, originally belonged to the first defendant. He sold it to the second defendant who entered into a joint venture with the plaintiff to develop the land. Subsequently the second defendant agreed to sell and transfer the lands to the third defendant who in turn transferred the lands to a limited company in which he was the managing director.